

Article - Real Property

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§4–106.

(a) No mortgage or deed of trust is valid except as between the parties to it, unless there is contained in, endorsed on, or attached to it an oath or affirmation of the mortgagee or the party secured by a deed of trust that the consideration recited in the mortgage or deed of trust is true and bona fide as set forth.

(b) (1) No purchase-money mortgage or deed of trust involving land, any part of which is located in the State, is valid either as between the parties or as to any third party unless the mortgage or deed of trust contains or has endorsed on, or attached to it at a time prior to recordation, the oath or affirmation of the party secured by the mortgage or deed of trust stating that the actual sum of money advanced at the closing transaction by the secured party was paid over and disbursed by the party secured by the mortgage or deed of trust to either the borrower or the person responsible for disbursement of funds in the closing transaction or their respective agent at a time no later than the execution and delivery of the mortgage or deed of trust by the borrower. However, this subsection does not apply where a mortgage or deed of trust is given to a vendor in a transaction in order to secure payment to him of all or part of the purchase price of the property. The affidavit required by this subsection is required for only that part of the loan that is purchase money and, if the requirements of this subsection are not satisfied, the mortgage or deed of trust is invalid only to the extent of the part of the loan that is purchase money.

(2) The lender may deliver net proceeds, deducting charges, interests, expenses, or advance escrow and charges due from the borrower, if the following conditions are met:

(i) The charges, interests, expenses, and other deductions listed above have been agreed upon in advance, in writing; and

(ii) The lender provides a schedule of the deductions along with the net proceeds delivered.

(c) Any affidavit required by this section may be made by one of the several mortgagees or parties secured by the deed of trust and has the same effect as if made by all. The affidavit may be made by any trustee named in the deed of trust, by an agent of the trustee, or by an agent of a mortgagee or of a party secured by the deed of trust.

(d) If the affidavit is made by an agent, he shall make affidavit to be contained in, endorsed on, or attached to the mortgage or deed of trust, that he is the agent of the mortgagee or party secured by the deed of trust, or any one of them, or of the trustee. This affidavit is sufficient proof of agency. The president, other officer of a corporation, or the personal representative of the mortgagee or party secured by the deed of trust also may make the affidavits.

(e) This section does not apply to any mortgage or deed of trust where the loan secured is one in which it is lawful to charge any rate of interest under § 12-103(e) of the Commercial Law Article.

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